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India: Situation of homosexuals; availability of support groups and state protection (June 2004 - April 2009)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Section 377 of the *Indian Penal Code* of 1860 states the following:

[w]hoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 152 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

The United States (US) Department of State's *Country Reports on Human Rights Practices for 2004*, states that, in India, Section 377 is "commonly used to target, harass, and punish lesbian, gay, bisexual and transgender persons" (28 Feb. 2005, Sec. 5). This statement is included in Section 5 of the US Department of State's *Country Reports on India* for 2004, 2005, 2006, 2007 and 2008 (US 28 Feb. 2005; *ibid.* 8 Mar. 2006; *ibid.* 6 Mar. 2007; *ibid.* 11 Mar. 2008; *ibid.* 25 Feb. 2009). According to *Country Reports 2005*, the "overarching nature of Section 377 allowed police to arrest gays and lesbians virtually at will" (US 8 Mar. 2006, Sec. 5).

A December 2004 essay published by the Alternative Law Forum (ALF), a collective that provides legal services, critical research, alternative dispute resolution and training on issues relating to social and economic justice (n.d.), indicates that Section 377 "is the de facto justification for the persecution and harassment of all those whose sexual expressions might qualify as 'queer'" (21 Dec. 2004a). The essay states that Section 377 has "hardly been used to prosecute cases of consensual adult male sexual relationships," but that it is the "basis for routine and continuous violence against sexual minorities at the level of the street and ... by the police" (ALF 21 Dec. 2004a). Similarly, a 2008 Human Rights Watch (HRW) report states that Section 377 continues to provide the conditions for "police harassment, extortion, arrests, unreported and arbitrary detention" of homosexuals in India (Dec. 2008, 54). As well, *Country Reports 2008* indicates that the police "committed crimes against homosexuals," threatening victims with arrest in order to dissuade them from filing a complaint (US 25 Feb. 2009, Sec. 5).

Another essay published by the ALF, entitled *Violence Against Lesbians in India*, by Tarunabh Khaitan, indicates that Section 377 does not include lesbians, because the law requires "penetration"; however, Khaitan states that Section 377 has been used by state authorities "to harass and intimidate" lesbians (12 Dec. 2004b). Discussing community violence, Khaitan indicates that discrimination against lesbians ranges from "queer-bashing" to the loss of jobs and residence (ALF 21 Dec. 2004b). A May 2005 British Broadcasting Corporation (BBC) article reports that, in several Indian states, lesbians have committed suicide due to harassment (17 May 2005). Sources indicate that there have been several lesbian suicides in the state of Kerala [southwest India] (*The Hindu* 22 Oct. 2008; ALF 21 Dec. 2004b).

In regard to the ability of lesbians to exit violent situations, Khaitan suggests that "it is very difficult for a single woman, whether straight or queer, to even get a house without a man" (ALF 12 Dec. 2004b; see also BBC 17 May 2005). As a result, Khaitan suggests that the lower status of women, including a lack of social, educational and material resources, restricts them from being able to "migrate to more accepting environments" (*ibid.*).

Country Reports 2004 indicates that homosexuals have been detained in hospitals and forced to receive treatment against their will in India (US 28 Feb. 2005, Sec. 5). Similarly, the 2008 HRW report states that "reports continue in India of forced detention of gays and lesbians in psychiatric hospitals, and involuntary aversion therapy and other forms of abuse aimed at 'converting' people to heterosexuality" (Dec. 2008, 54; see also *The Guardian* 30 June 2008). The International Gay and Lesbian Human Rights Commission (IGLHRC) also indicates that homosexuals are forced into "reparative therapies" in hospitals (25 Sept. 2008).

In June 2004, the IGLHRC and the International Lesbian and Gay Association (ILGA) reported on the assault of a *hijra*, a "member of a traditional male-to female transsexual community in South Asia," by the police in Bangalore (IGLHRC 24 June 2004; ILGA 30 June 2004). After being raped by several men, the individual was taken by the police to the police station where she was "arrested, verbally harassed and tortured" (IGLHRC 24 June

2004; ILGA 30 June 2004). The incident was brought to the attention of IGLHRC and ILGA by Sangama, a human rights organization that supports sexual minorities in Bangalore (n.d.a), which provided them with details on the incident and a request to petition state authorities to respond to this case (IGLHRC 24 June 2004; ILGA 30 June 2004). No further information on this case could be found among the sources consulted by the Research Directorate.

In January 2006, *The Times of India* reported on the arrest of four men from Lucknow [the capital of Uttar Pradesh] on charges of running an online gay club and engaging in "'unnatural' sex" in public places (5 Jan. 2006; HRW 9 Jan. 2006). HRW reports that undercover police agents detained one of the four men, forcing him to arrange a meeting with acquaintances; during this staged meeting, the police arrested all four men (9 Jan. 2006). HRW and *The Times of India* indicate that the police had the names, phone numbers and addresses of other club members (HRW 9 Jan. 2006; *The Times of India* 5 Jan. 2006).

According to an 18 November 2006 article in the *Economic and Political Weekly*, there is no evidence that the men arrested had had sex, as police claimed; the article suggests that the arrests are predicated upon the belief that these men are homosexuals and are "likely to commit sodomy." The article indicates that the four men arrested were released on bail after 12 days, but that the case continued (*Economic and Political Weekly* 18 Nov. 2006). Further information on the case could not be found among the sources consulted by the Research Directorate.

On 20 October 2008, Bengaluru police arrested five hijras and charged them with extortion (*Guardian* 7 Nov. 2008; IGLHRC 7 Nov. 2008). According to information supplied to the IGLHRC by Sangama, the hijras were assaulted by the police in custody (IGLHRC 7 Nov. 2008). When members of Sangama received a call from one of the arrested individuals, five "crisis team" members went to the police station, where they were also assaulted (*Guardian* 7 Nov. 2008; IGLHRC 7 Nov. 2008). Approximately 150 human rights activists gathered outside the Banashankari police station on 20 October 2008 to advocate for the release of the crisis team members (ibid.). Six activists were invited to enter the police station, allegedly to discuss the situation, but were instead arrested (ibid.). These six activists were also assaulted, including two women who were sexually assaulted (*Guardian* 7 Nov. 2008; see also IGLHRC 7 Nov. 2008).

The remaining protesters outside the police station were also reportedly assaulted by police with batons (*Guardian* 7 Nov. 2008; IGLHRC 7 Nov. 2008). According to the IGLHRC, the five hijras and the five Sangama crisis team members were released on bail on 22 October 2008, while 31 protesters were released on bail on 21 October 2008 (7 Nov. 2008). Further information on this incident, including whether there were repercussions for the police involved, could not be found among the sources consulted by the Research Directorate.

According to the IGLHRC, in 2003, the Naz Foundation [also referred to as Naz India], a non-governmental organization (NGO) whose mission statement includes raising awareness about, and supporting those living with, HIV (Naz n.d.), submitted a petition to the Delhi High Court stating that Section 377 of the *Indian Penal Code* is unconstitutional (IGLHRC 25 Sept. 2008). This petition was rejected by the Delhi High Court, but was subsequently appealed in the Supreme Court (ibid.). In 2006, the Supreme Court returned the petition to the Delhi High Court, and in May 2008, the Delhi High Court began hearings relating to the petition (ibid.). The New Delhi-based magazine *Tehelka* indicates that the Naz Foundation and a coalition of NGOs are requesting that the government "read down" Section 377 so that it does not criminalize consensual sex between adults (18 Oct. 2008).

Sources indicate that the Union of India was split on the issue of decriminalizing consensual adult homosexual sex, with the Minister of Health and Family Welfare supporting the Naz petition, and the Minister of Home Affairs opposing it (*The Hindu* 21 Oct. 2008; *Tehelka* 18 Oct. 2008). In November 2008, the Delhi High Court "reserved judgement" on the petition (*The Hindu* 8 Nov. 2008; *Pink News* 7 Nov. 2008), asking for final written submissions from each side (ibid.). Information on the Delhi High Court's decision could not be found among the sources consulted by the Research Directorate.

On 29 June 2008, coordinated gay pride marches took place in Bangalore, Delhi and Kolkata (NDTV.com 30 June 2008; Indo-Asian News Service 27 June 2008). Sources indicate that they were the largest gay pride marches to take place in India to date (ibid.; NDTV.com 30 June 2008). According to an Indo-Asian News Service article, the police reportedly stated that security measures were in place to protect the marchers (Indo-Asian News Service 27 June 2008). Activist Gautam Bhan similarly stated that the police had given permission to march; however, a New Delhi police spokesperson stated that he had no information regarding the parade and would not comment on a possible police response (AP 23 June 2008). A *Daily News and Analysis* (DNA) article reported on the 16 August 2008 gay pride march held in Mumbai; though it was not the first, the article indicates that it was the most successful to date, with approximately 500 marchers (19 Aug. 2008). No reports of violence during these parades could be found among the sources consulted by the Research Directorate.

Referring to the possibility of seeking support at human rights organizations or NGOs, Khaitan states that "most human rights organizations in India have not begun to address the issue of queer rights" (ALF 12 Dec. 2004b). In *Country Reports 2004*, the US Department of State indicates that gay and lesbian rights are not considered human rights in India (28 Feb 2005, Sec. 5). For instance, sources suggest that the National Human Rights Commission (NHRC) did not consider homosexual rights to be synonymous with human rights when the NHRC refused to address a 2001 incident wherein a man was given shock therapy to cure his homosexuality (US 28

Feb. 2005, Sec. 5; see also HRW Dec. 2008). However, since then, the NHRC chief has voiced the NHRC's support for homosexual rights, as well as the rights of sex workers (*The Times of India* 6 Oct. 2008).

There are numerous NGOs that operate in several urban centres, including New Delhi, Kolkata, Mumbai and Chennai, that are specifically designed to support sexual minorities (INFOSEM n.d.a; see also BBC 17 May 2005). The India Network of Sexual Minorities (INFOSEM), a confederation of organizations that "advocate for sexuality and sexual health rights" (n.d.b), maintains a list of approximately 25 organizations grouped by region and target group, with a majority of the organizations serving men who have sex with men, followed by transgender organizations, followed by lesbian organizations (INFOSEM n.d.a). Sangama maintains a larger list of "queer groups" operating in India, listing three groups that provide telephone help lines (n.d.b). GayLawNet, a website that provides legal resources, including contact information for gay or lesbian (friendly) lawyers, to the gay, lesbian, bisexual, transsexual and intersex community (25 Apr. 2009), maintains a list of organizations in India that may be able to refer individuals to lawyers, as well as the contact information for two lawyers (10 Dec. 2006).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: The International Gay and Lesbian Human Rights Commission (IGLHRC) and the Alternative Law Forum (ALF) did not provide information within the time constraints of this Response.

Internet sites, including: The Advocate, Asian Human Rights Commission (AHRC), European Country of Origin Information Networks (ecoi.net), Freedom House, *The Gay and Lesbian Review*, *India Today*, International Lesbian and Gay Law Association, Law Commission of India, National Human Rights Commission (NHRC), Naz India, People's Union for Civil Liberties (PUCL), Sodomy Laws, United Kingdom (UK) Border Agency, United Nations (UN) Human Rights Council, UN Integrated Regional Information Networks (IRIN), UN Refworld.

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